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No. 85-1692

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1985

HAROLD LOVELACE,

Petitioner,

v.

AMETEK, INC.,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of New York, Appellate Division, Third Department

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RESPONDENT'S BRIEF IN OPPOSITION

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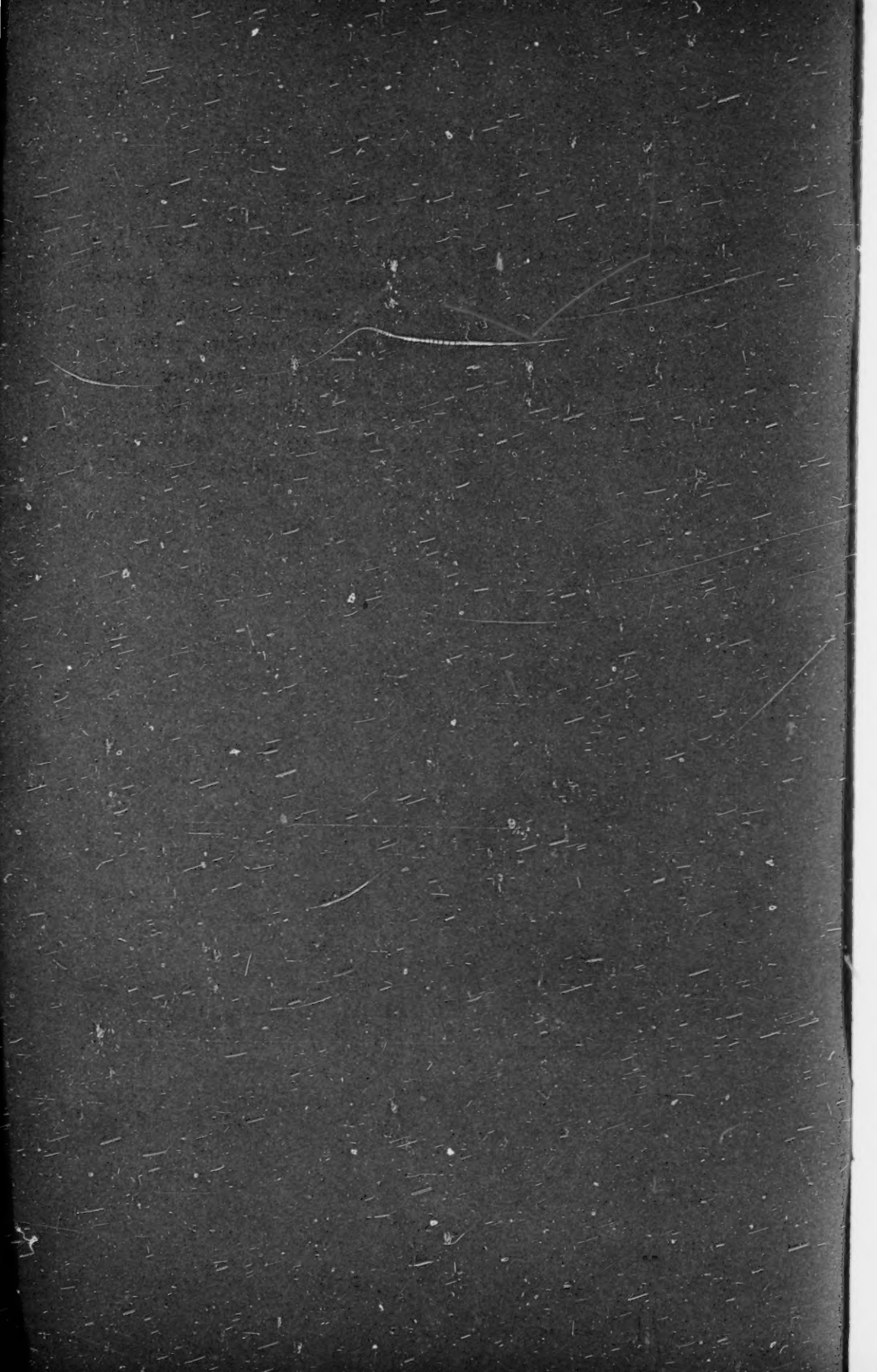

Question Presented

The New York State Courts, relying upon settled principles of New York product liability common law, granted summary judgment to respondent manufacturer in this action for personal injuries. Now, for the first time in his petition to this Court, petitioner claims that the granting of summary judgment deprived him of the right to trial by jury in violation of the Seventh Amendment to the Constitution of the United States. Is review by this Court warranted?

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RESPONDENT'S BRIEF IN OPPOSITION

Statement of the Case

In or about 1920, Tolhurst Machine Works, respondent Ametek's predecessor, manufactured the machine involved in this action—a centrifugal Extractor— which is an industrial machine used to remove water from fabric by means of centrifugal force.[1] As designed and built by Tolhurst, the Extractor contained "interlocking safety guards," or cov-

1. Respondent Ametek has no corporate parents, nor subsidiaries or affiliates not wholly owned by it.

ers, which would prevent its user from coming into contact with any spinning parts during the operation of the machine. As further protection, the Extractor had a built-in safety interlock, connected to the safety covers, which prevented the machine from operating if the covers were in an open position.

After its initial sale of the Extractor, neither Tolhurst, nor its successor Ametek, was ever called upon to repair or otherwise service the equipment. Indeed, it is now no longer known to whom the Extractor was intially sold, nor how many intermediate sales of the machine took place.

Some sixty years after Ametek and its predecessor last saw the Extractor, petitioner Harold Lovelace was injured when, during the course of his employment, he was using the Extractor. During those intervening decades, someone had entirely removed the covering safety guards, which left the opening to the Extractor unprotected, and which defeated the interlocking safety devices. Indeed, those interlocking safety devices had themselves been tampered with.

The law in New York with respect to a manufacturer's liability under such circumstances is well settled. As the New York Court of Appeals held in *Robinson* v. *Reed-Prentice Division of Package Machinery Co.*, 49 N.Y.2d 471, 475-9, 426 N.Y.S.2d 717, 717-20, 403 N.E.2d 440, 441-3 (1980):

> "A manufacturer of a product may not be cast in damages, either on a strict products liability or negligence cause of action, where, after the product leaves the possession and control of the manufacturer, there is a

> subsequent modification which substantially alters the product and is the proximate cause of plaintiff's injuries. * * * No manufacturer may be automatically held liable for all accidents caused or occasioned by the use of its product [citation omitted]. While the manufacturer is under a nondelegable duty to design and produce a product that is not defective, that responsibility is gauged as of the time the product leaves the manufacturer's hands [citations omitted]. Substantial modifications of a product from its original condition by a third party which render a safe product defective are not the responsibility of the manufacturer."

Accordingly, respondent Ametek moved for summary judgment dismissing the complaint, since it was beyond dispute that the cause of petitioner's injuries was the absence of the safety covers, and the removal of the safety covers was a substantial modification to the originally manufactured product.

In opposition to Ametek's motion for summary judgment, petitioner submitted the affidavit of his retained expert, who, in substance, opined:

> "That for a mechanical interlock system to be considered a safety system, it must be designed properly and it must not be able to be defeated, or if it fails, it must render the machine inoperative. If the mechanical interlock system does not, the system is not structurally sound. If the alleged safety features are able to be defeated or fail of their own volition, there necessarily occurs a failure of safety due to a deficient design."

In other words, as the Trial Court concluded in its opinion [Petitioner's Appendix, p. A10], petitioner's argument was that "the machine must be fail safe."

By order dated March 26, 1984, the Supreme Court of the State of New York, County of Montgomery, granted respondent Ametek's motion for summary judgment. The Court relied upon the enunciation of substantive New York law by the New York Court of Appeals in *Robinson*, concluding that, "Ametek cannot be held liable for an accident that arose as the result of a substantial alteration of the extractor, which destroyed the functional utility of that product's safety features" [Petitioner's Appendix, p. A11].

On appeal, the Supreme Court of the State of New York, Appellate Division, Third Department, unanimously affirmed that determination [111 A.D.2d 953, 490 N.Y.S.2d 49 (3d Dept. 1985)]. That Court held that, "the case of *Robinson* v. *Reed-Prentice Div.* [citation omitted] governs and requires an affirmance. * * * Essentially, plaintiff's objections to the extractor's design are premised on his expert's opinion that the manufacturer was duty bound to make the machine fail-safe, a thesis squarely rejected in *Robinson*" [111 A.D.2d at 954-5, 490 N.Y.S.2d at 51].

Thereafter, petitioner sought leave of the Appellate Division to appeal to the New York Court of Appeals. By order dated September 10, 1985, that Court denied the motion. Subsequently, petitioner moved in the New York Court of Appeals for leave to appeal. By order dated January 14, 1986, the New York Court of Appeals denied leave to appeal [67 N.Y.2d 601, 490 N.Y.S.2d 49, 490 N.E.2d 555 (1986)].

This petition followed.

Reasons for Denying the Writ

Petitioner's complaint was dismissed by the New York Courts because, as a matter of New York common law, respondent Ametek bore no responsibility for petitioner's injuries. Petitioner attempted to contrive issues of fact by suggesting that there was a "battle of the experts." But both the trial and appellate courts unanimously recognized that there were no bona fide disputes with respect to the material issues, and determined that respondent was entitled to judgment as a matter of law.

The petition for a writ of certiorari should be denied. Apart from the lack of merit in petitioner's contentions, his application fails to raise any substantial federal question. Moreover, the federal constitutional issue he purports to raise in this Court was not properly raised in the state Courts.

The substance of petitioner's claim to this Court is that the state Courts erred in granting respondent summary judgment, and that such error deprived him of a trial by jury in the state Courts. He asserts that such deprivation violated his right to a trial by jury pursuant to the Seventh Amendment to the Constitution of the United States. The short, and complete, answer to petitioner's assertion was given by the United States Court of Appeals for the Fourth Circuit in *Letendre* v. *Fugate*, 701 F.2d 1093, 1094 (4th Cir.), *cert. den.*, 464 U.S. 837 (1983):

> "The Seventh Amendment's right to trial by jury in the federal courts has not been extended to the States through the Fourteenth Amendment. *Olesen* v. *Trust*

> *Co. of Chicago*, 245 F.2d 522 (7th Cir.), *cert. den.*, 355 U.S. 896 (1957). Therefore, a denial of a jury trial in a state proceeding does not violate the due process clause. *E.g. Wagner Co.* v. *Lyndon*, 262 U.S. 226 (1923); *Walker* v. *Sauvinet*, 92 U.S. 90 (1876). In view of these cases, we think the argument that the equal protection clause requires a jury trial in state court proceedings is also without merit."

Accordingly, the petition fails to raise a federal constitutional issue.

In any event, this lawsuit involves only questions of state common law of product liability. If the granting of summary judgment in this case could raise federal constitutional issues, it is difficult to imagine any case that would not. Nothing about the issues decided in this case raises unique or important legal questions requiring resolution by this Court [*See Rice* v. *Sioux City Cemetery*, 349 U.S. 70, 74, 79 (1955); *Palmer Oil Corp.* v. *Amerada Petroleum Corp.*, 343 U.S. 390 (1952)].

Finally, even if a substantial federal question was raised here, it is raised for the first time in this petition. In the state Courts, petitioner asserted that material factual issues existed, and that summary judgment should not be granted respondent. However, nowhere did he allege that the granting of summary judgment would violate rights protected by the Constitution of the United States. Having failed to raise such issue in the state Courts, petitioner is precluded from raising them in this Court [*Godchaux Co.* v. *Estopinal*, 251 U.S. 179, 181 (1919); *Beck* v. *Washington*, 369 U.S. 541, 550-54 (1962)].

Conclusion

For the reasons set forth above, it is submitted that the petition should be denied.

Respectfully submitted,

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